

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

**IN RE UNITED STATES MAGISTRATE JUDGES
MICHAEL R. MERZ AND
SHARON L. OVINGTON**

FILED
KENNETH E. MURPHY
03 JAN 13 PM 3:14
U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
WESTERN DIVISION DAYTON

GENERAL ORDER OF ASSIGNMENT AND REFERENCE

Assignment of Cases of Magistrate Judges

All civil and miscellaneous cases filed at the Dayton location of court shall be randomly assigned upon filing to one of the two resident District Judges and one of the two resident Magistrate Judges. The Clerk shall note the assignment on the case file. This assignment does not constitute a reference to the assigned magistrate judge for any purpose, but merely selects the magistrate judge to whom referrals in the case, if any, shall be made.

General Reference to Magistrate Judges

Criminal Matters

The following criminal matters are referred to the United States Magistrate Judges:

1. Issuance of search warrants, seizure warrants, trap and trace orders, beeper warrants, and any other orders for the securing of evidence, except wiretap orders, the issuance of which requires approval of an Article III judge.

2. Issuance of arrest warrants or summonses on complaints under Fed. R. Crim P. 4.
3. The conduct of initial appearances, preliminary examinations, and bond or detention hearings in felony cases.
4. Proceedings for the waiver of speedy presentation to the grand jury.
5. All proceedings in petty offense cases and in Class A misdemeanor cases unless the defendant declines to consent to magistrate judge jurisdiction. Pursuant to 18 U.S.C. §3401, Magistrate Judges Merz and Ovington are specially designated to exercise jurisdiction in misdemeanor cases in this District.

The magistrate judges shall exercise criminal jurisdiction on a monthly rotation basis, beginning with Magistrate Judge Merz as the "duty judge" in the month in which Magistrate Judge Ovington assumes office and the following month. The Magistrate Judge who conducts the initial appearance in any case shall remain as the assigned judge regardless of the rotation period. The Magistrate Judges are authorized to transfers cases among themselves on mutual consent and to perform criminal duties in one another's stead in the absence or unavailability of the magistrate judge on duty.

Civil Matters

Pursuant to 28 U.S.C. §636(b), the following categories of cases filed at the Dayton location of court on or after the date on which Magistrate Judge Ovington assumes office, are hereby ordered referred to the United States Magistrate Judge to whom the case has been assigned who is authorized to perform in each such case any and all functions authorized for full-time United States Magistrate Judges by statute. In each such case the Magistrate Judge shall proceed in accordance with Fed. R. Civ. P. 72.

If the parties in any such case unanimously consent to plenary magistrate judge jurisdiction under 28 U.S.C. §636(c), the assigned Magistrate Judge is hereby authorized to exercise such jurisdiction in accordance with the applicable statutes and Fed. R. Civ. P. 73, and without further order of reference. As permitted by statute, the assigned Magistrate Judge may remind the parties and counsel of their right to consent under §636(c), but shall also remind them that there will be no adverse substantive consequences to failure to consent.

The referred categories of cases are:

1. **IRS Summonses.** All cases filed pursuant to 26 U.S.C. §§7402(b) and 7604(a) to judicially enforce summonses issued by the Internal Revenue Services. The Federal Rules of Civil Procedure regarding intervention and discovery are suspended in such cases. *See Donaldson v. United States*, 400 U.S. 528 (1971).
2. **Emergency Matters:** If the assigned District Judge is absent and expected to be absent for more than twenty-four hours and an emergency matter is filed in a case assigned to that District Judge, said matter is hereby referred to the assigned Magistrate Judge to undertake any and all procedures necessary to resolve the emergency matter expeditiously. If the parties unanimously consent under 28 U.S.C. §636(c), the assigned Magistrate Judge may decide any emergency dispositive matter. Otherwise the assigned Magistrate Judge shall proceed pursuant to Fed. R. Civ. P. 72. This paragraph does not apply to motions for temporary restraining orders which should be referred by the Clerk to the other resident District Judge. General Order No. 13, filed May 22, 1985, is hereby VACATED.
3. **Government Loans:** All cases filed by the United States seeking recovery of a loan.
4. **Miller Act:** All cases arising under the Miller Act.
5. **Pro Se Cases:** All cases filed by persons proceeding *pro se*. In such cases, the reference shall not terminate if the plaintiff later obtains counsel unless otherwise ordered by the assigned District Judge.

6. Post-Conviction Relief: All cases collaterally attacking a criminal judgment, including without limitation those filed under 28 U.S.C. §§2241, 2254, or 2255. All such cases attacking a judgment which includes a sentence of death shall be assigned and referred to Magistrate Judge Merz.

7. Social Security: All appeals from decisions of the Commissioner of Social Security regarding Social Security benefits.

8. In Forma Pauperis: All applications to proceed *in forma pauperis* upon initial filing. Because such applications are filed and must be considered before a case is opened and assigned, *in forma pauperis* applications shall be considered by the duty judge.

9. Recommital: In any case in which a party files objections to or an appeal from a decision or report and recommendations of a Magistrate Judge, the assigned Magistrate Judge is authorized, pursuant to Fed. R. Civ. P. 72(b), to reconsider the decision and file a supplemental report and recommendations or supplemental decision.

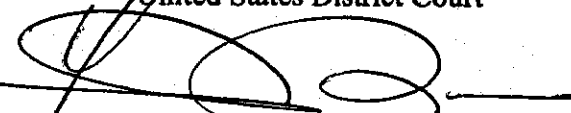
In each case in the above-described categories, this General Order shall act as a reference to the assigned Magistrate Judge without further order. The Clerk shall advise the parties in each such case of this General Order of Reference and of their right to consent to plenary magistrate judge jurisdiction under 28 U.S.C. §636(c).

January 13, 2003.



Walter Herbert Rice, Chief Judge
United States District Court

January 13, 2003.



Thomas M. Rose
United States District Judge